

CALFED Governance Issues

In its review of the “governance” of the CALFED program and the role of the Bay-Delta Authority, the Commission has surveyed participants and is interviewing and taking testimony from state and local officials and stakeholders. From this process to date, the Commission has been told about a number of significant issues, which are summarized below. This summary is not predicated on Commission deliberations and does not represent any conclusions by the Commission. Rather, the summary was prepared as a mechanism to focus future testimony and discussions related to the Commission’s review. In particular, the Commission would welcome written comments that correct, clarify or amplify these issues, as well as comments that identify other issues not included in this summary.

Leadership

It’s not clear who is responsible for the success or failure of CALFED.

Many expect the Bay-Delta Authority to speak for the entire CALFED program, but it has not become a unified and clear voice for all of the CALFED implementing agencies. A number of factors contribute to this disconnect. To some, the BDA is just one of many CALFED agencies, charged with coordination and oversight, but without authority over any of the implementing agencies. The non-voting status of the federal agencies dilutes the ability of the BDA board to “speak” for the CALFED implementing agencies. And because the board has public and legislative members, the BDA represents interests beyond the implementing agencies.

In addition, with an unpaid chairman and an executive director appointed by the Governor, the responsibility for the BDA is bifurcated. The Secretary of Resources, a position that was the State’s point person on CALFED prior to the BDA, appears to no longer be directly responsible for the success or failure of CALFED. As a multiyear and multiagency effort, it is often difficult for outsiders to understand the mechanics of CALFED. The untraditional governance structure further confuses the picture.

It’s not clear who speaks for the Governor.

Even within the state hierarchy, it is not clear who is the Governor’s point person on CALFED. The chairman of the BDA board is appointed by the Governor, but it is an unpaid position with few specific authorities in statute. The executive director of the BDA also is appointed by the Governor, confusing the director’s reporting authority to the BDA board. The Secretary of Resources, while clearly a position of leadership, is just one vote on the BDA board and is not the only cabinet secretary represented on the board.

This leadership void contributes to several problems. To the extent that problems need to be resolved within the executive branch, the roles and responsibilities of BDA officials, agency secretaries, department directors and the Governor’s direct staff are unclear. To the extent that the administration must communicate clearly, sometimes forcefully, to federal agencies, legislative members and to stakeholders, the authority and responsibility to do so is not clearly vested with a single individual.

Political leadership is needed to resolve policy disputes and reach agreements.

Some of the complaints about CALFED result from difficult decisions that have not been made, such as completing a balanced and agreed upon finance plan. In the August public hearing, a number of witnesses also identified challenging issues not fully incorporated in the ROD that government officials will need to deal with in the near future, such as the effects of global

warming. Some participants assert that the Authority needs more authority to deal with these kinds of problems, an issue described below. The current governance structure does not explicitly vest with any position or agency the political and policy responsibility for brokering difficult agreements, setting priorities, resolving high-level conflicts, and delivering solutions to the Governor and the Legislature.

Federal interest in CALFED has diminished since the ROD was signed.

Federal officials assert that they are still committed to CALFED. But state officials are increasingly frustrated that the federal government has not funded the program at the level anticipated in the ROD and that Congress did not authorize federal agencies to fully participate in the BDA. State participants also believe that federal agencies are not as engaged in CALFED as they once were. While it is unclear how involved the federal government must be for CALFED to reach its goals, the program was predicated on an equal commitment of executive-level support, agency buy-in, and financial contribution.

Extraordinary leadership is necessary to maintain strong federal-state ties.

The architects of the governance structure admittedly struggled to develop a workable partnership of federal and state agencies that does not infringe on the necessary legal separation of the two governments. Some participants describe this as an organizational design problem. Others describe it as an issue that cannot be resolved by structure – and the political will that was once present to overcome bureaucratic obstacles is now absent.

The state-federal partnership also is an executive-legislative partnership times two. To be sustained over time, the goals and commitments to CALFED must be shared by state and federal executive branches, and state and federal legislative branches. Some participants suggest that it may be too much to ask for California's congressional delegation to become united on the issue, and there is broad agreement that unanimity is only possible if there is strong consensus among the stakeholders on all of the substantial elements of CALFED. These dynamics require a combination of clear authority and extraordinary diplomatic skills.

Mission-Vision

There is waning consensus among participants on the goals and priorities of CALFED.

There is overall recognition that CALFED is focused on four goals – improving water quality, increasing the integrity of the levee system, enhancing water supply and restoring the ecosystem of the Bay-Delta region. But there is diminishing consensus among stakeholders to support the detailed actions related to each of these goals.

This trend is partially attributed to uneven progress among the programs – concerns that the parties are no longer getting better together. Some participants believe the program is out of balance and that inadequate progress has been made in some areas, such as the development of more surface storage and improving water quality. Others have suggested that greater progress is being made than many people realize, and that more robust accountability would help to restore confidence and trust.

Many people have suggested that the consensus reflected in the Record of Decision was predicated heavily on the belief of stakeholders that CALFED would be a source for substantial funding for projects that would otherwise not receive public support. As the hopes for full funding have waned, the value of CALFED in their eyes is diminished.

Still others hoped that CALFED would be able to advance their policy agenda, and to the extent they are disappointed, those stakeholders are looking to other venues to pursue their causes.

The core purpose of the BDA is not agreed upon by participants.

Some stakeholders believe the BDA should provide a coordinating role that identifies opportunities to integrate efforts to achieve shared goals. For others, the Authority should set goals, establish priorities, resolve conflicts and monitor performance. This fundamental tension, between BDA as a facilitating entity or a decision-making entity, hampers progress.

These disagreements over what BDA should be also fuel concerns regarding its performance. Those who see the Authority as having the potential to set priorities and actively resolve conflicts are disappointed by its focus on “coordination” and an apparent interest in avoiding conflict. Others are concerned by a perceived expansion of the BDA’s reach and believe it should be a “servant to the implementing agencies.” Without a clear or successful model for state-federal partnership to draw on, the BDA is burdened with trying to live up to widely different expectations. While many participants believe the BDA could be successful as an agency that governs through persuasion rather than regulation, the new agency has struggled to create gravitas without the benefit of a strong political sponsorship.

This and other issues related to mission and vision are difficult to resolve with structure alone. As physical conditions and political dynamics evolve, some participants assert that authoritative leadership is required to affirm what issues are in play, discern whether goals need to be modified and shepherd stakeholders through conflicts.

Stakeholders also do not agree on the scope of CALFED.

The Record of Decision provides a detailed roadmap for the CALFED program and specific activities for implementing agencies. Some participants believe that the ROD should be narrowly interpreted, if for no other reason than it presents a daunting number of projects and actions by itself.

Other stakeholders see CALFED as a mechanism for identifying and resolving problems that can lead to further degradation of the Bay-Delta as an ecosystem and source of freshwater. Some participants believe the governance structure must have the capacity to revisit the ROD to identify actions that are no longer priorities and to establish new action items for CALFED. Others, recognizing the significance of the Delta to the entire waterscape, believe CALFED should be a venue for debating and maybe even making statewide water policy decisions.

From a practical standpoint, this issue has led to significant disputes about which actions by the implementing agencies should be a concern of the BDA and CALFED, and which should not. These disputes have challenged an already fragile governance structure and injured relationships among some of the implementing agencies. To some degree, these disputes arise from imprecise definitions of the BDA’s coordinating and oversight responsibilities. Less directly, this issue confuses expectations for what should be accomplished with CALFED and makes CALFED and the BDA vulnerable to criticisms that they are not getting the job done.

Authority

The Bay-Delta Authority does not have the authority it needs to meet expectations.

The Authority is called upon to coordinate the work of state and federal agencies and provide oversight. But it cannot compel action by those agencies, nor can it impose consequences on agencies that fail to work toward CALFED priorities or even actively work against them. In

crafting the BDA, policy-makers deliberately rejected a plan to create a “strong” authority with purse-string and other controls over the implementing agencies.

As a result, the BDA does not have the legal authority to unilaterally implement financing and other actions that are expected from the CALFED leadership, and as described above, the BDA lacks the political authority to broker multilateral deals. In addition, others have suggested it is unrealistic to expect state and federal officials who are legally responsible to implement policy decisions – to be involved in brokering major new policy decisions.

Not only did policy-makers decline to give the BDA any authority over other agencies, but they explicitly stated that the creation of BDA does not limit those agencies in any way. While the language is clear, the result is not. Participants point out that some agencies – those with regulatory power, in particular – are always reluctant to “coordinate” efforts; they are even less likely to if their governing statutes are not amended to state how they must cooperate.

Neither the BDA, nor CALFED overall, are viewed as a place where member agencies, their customers and other stakeholders can achieve their goals quicker and more effectively than they can on their own or elsewhere.

A substantial part of the initial attraction of CALFED was to move the participants away from costly and time consuming conflicts, particularly in the courts and regulatory proceedings, to a venue where disputes could be resolved more quickly and to better ends. As described above, the faith in CALFED as a venue was enhanced by the promise of public funding, and as funding declines that benefit will be diminished.

But a number of participants also point to examples where agencies and stakeholders use the CALFED process only when in their best interest or are pursuing goals “outside” of the CALFED process, either through litigation or other avenues that circumvent the “collaborative” procedures available through the BDA. To some, this trend reflects a declining commitment to inclusive and non-confrontational decision-making. Others see this as a sign that the governance structure is not vested with the authority – or has not developed the means – of resolving disputes that stand in the way of balanced progress.

Organizational Issues

The structure of the Authority’s board does not support its functions.

The Authority’s board is made up of representatives of six state agencies, six federal agencies, seven public members, one member of the Bay-Delta Public Advisory Committee and four non-voting members of the Legislature. This membership configuration makes it difficult for the board to provide objective oversight, as department officials are hesitant to scrutinize the work of other state agencies or to point out their own failings. The inclusion of public and legislative members – who frequently lack technical expertise or do not understand the internal workings of the state and federal agencies – is a weak model for promoting coordination within the executive branch and between state and federal agencies.

The coordination and oversight functions of the Authority are seemingly in conflict.

Coordination and oversight often are conflicting responsibilities for the Authority. While the staff describes the BDA as one of the implementing agencies, some of those agencies have quickly come to see BDA as another “control” agency, where they must go to have their budgets reviewed and their program plans approved. To the degree that the Authority attempts to

exercise its oversight responsibilities, it endangers its relationship with those agencies that are necessary to effectively coordinate actions.

The role and function of the board of the Bay-Delta Authority, relative to its staff, is unclear.

The Bay-Delta Authority is housed within the state Resources Agency. The director is appointed by the Governor in consultation with the U.S. Secretary of the Interior. But the board is an independent entity – reinforced by its public and legislative members. The potential for conflicts – between the direction of the board and the priorities of the Governor – is significant.

Some federal agencies – and in particular, those that are members of the Authority board – are frustrated with the role of the Authority staff in providing information to the Authority board that the implementing agencies disagree with.

The independent science program has not met needs or expectations.

The BDA's science program has not been given the resources identified in the ROD, and does not have the ability to direct the existing scientific resources within the implementing agencies. While participants support the idea of science-based decisions, the BDA has not been able to operationalize this function in a way that meets the needs of the agencies, policy-makers or the public. The effort appears to be complicated by the presence of multiple science boards and a diffusion of data among the agencies. The outgoing lead scientist has made numerous recommendations for improving the management of the science program to fortify its ability to assess, describe and communicate the scientific aspects of CALFED programs and the estuary.

Procedures

Adaptive management has not been adopted.

The ROD specified that program implementation would be achieved through an adaptive management model, but some participants express frustration that there is no established mechanism for using new information to influence CALFED decisions. Adaptive management is not institutionalized in the CALFED process. When management decisions do employ new information, it is the result of individual initiative rather than a robust decision-making process. While mid-course corrections do occur, there is no clear procedure – or expectation – that practical knowledge gained through implementation will routinely be used to make those corrections. This concern applied to information derived through scientific inquiry, as well as management experience.

Procedures are not established to resolve “boundary” issues.

As described above, there is ambiguity and sometimes disagreement as to what qualifies as an issue that must be addressed through the CALFED process. Some of this confusion could be resolved if the BDA board had clear and formal procedures for logically and consistently setting the agenda and making decisions. Administrative rules defining what belongs on the CALFED table and what does not could overcome the Authority's controversial boundary issues.

Decision-making procedures have not been adequately developed.

The BDA has not developed protocols or rules of procedures that establish who will make different decisions and how those decisions will be made. Some participants believe that CALFED generally, and BDA in particular, needs to adopt more collaborative decision-making

procedures. From this perspective, the Authority should be the venue for resolving most or all major conflicts that impact the Bay-Delta, and those procedures should involve all of the stakeholders who want to be part of the process. Advocates of that approach argue it is necessary to develop and maintain a stronger consensus on solutions and prevent conflicts from spilling into the courts, regulatory venues or the Legislature.

Others contend that procedures need to be developed that would focus the Authority on making difficult policy-level choices, such as setting priorities among the existing projects and determining how limited resources should be allocated.

Accountability

The progress of the program and evidence that progress is “balanced” is not clear to all parties.

The CALFED program is predicated on the idea of balanced progress – to prevent the priorities of some stakeholders from overshadowing the priorities of other stakeholders. But the BDA has not put in place required performance measures, making it difficult to monitor progress in ways that document added value or indicate whether progress is sufficient or “balanced.”

The Authority’s staff indicate that progress is being made on performance indicators, but that work was delayed by the Authority’s slow start and inadequate resources. They also point out that the development and use of indicators is farther along in those programs that had made substantial progress prior to the BDA opening its doors.

Still, the procedures of the board itself, as well as the annual report, do not focus attention on monitoring programs and assessing balance. There also seems to be some anxiety about the consequences of declaring the program unbalanced, even if many stakeholders already believe that is the case. Some of this anxiety is attributed to concerns that the CALFED consensus is too fragile to endure such a declaration, while others suggest that there is not the political sponsorship needed to make needed alignment and restart the CALFED program.

Legislative oversight has been ineffective.

Legislative members who have expressed concern about the progress of CALFED, and the operation of the BDA in particular, say they have inadequate tools for encouraging improvements. The placement of legislative members as non-voting members on the Authority board was presumably intended to provide a mechanism for the Legislature to monitor progress and influence decisions of the BDA. Those lawmakers who sit on the board also have used legislative mechanisms for expressing concerns and urging specific actions. Still, those lawmakers say that cutting CALFED’s budget – a sign often interpreted by the public as an attempt to diminish a program – is a blunt tool in their effort to strengthen the program.

Public decision-making is not providing needed transparency.

Several participants said a fundamental goal of the BDA was to improve “transparency” in the CALFED program, and the deliberations and decisions of the implementing agencies in particular. At the same time, a number of agency officials acknowledge that public managers are reluctant to air disagreements with partner agencies and so some of the issues that would have been squarely discussed and resolved prior to the formation of the BDA are not being dealt with effectively. More recently, agency officials have returned to their practice of discussing and working through issues among themselves prior to BDA meetings.

This issue is a persistent theme in the history of CALFED, defined by concerns that too many issues are worked out “behind closed doors” and the seemingly paradoxical assertion that

stakeholders have increasingly been involved in influencing those decisions. Some have suggested that this issue would be resolved in part if CALFED – and the BDA, in particular – fortified its use of collaborative decision-making and dispute resolution. Others have suggested that it is unrealistic for government officials to disagree in public. They suggest that stakeholders would be better off if the agencies committed to procedures for publicly identifying and describing issues, and allowing for public review and comment on issues prior to decisions being made. As currently structured, public meetings may not be the only or the most effective way of increasing public understanding of decisions that must be made and the information that is being used to make those decisions.